IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10496 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT WATER RESOURCES DEV. CORPORATION LTD.

Versus

VITHALBHAI GAMBHIRBHAI BARIYA

Appearance:

MR BA VAISHNAV for PARESH UPADHYAY for Petitioners

MR RS PANJWANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/05/2000

ORAL JUDGEMENT

By means of filing this writ petition, the petitioner-Gujarat Water Resources Development Corporation Limited [hereinafter referred to as, `the Corporation'] seeks to challenge the Award dated 13th July, 1999 passed by the Labour Court, Vadodara in Reference (LCV) No. 292 of 1992. In the said Award, the

Labour Court has directed the petitioner-Corporation to reinstate the respondent-Vithalbhai Gambhirbhai Baria [hereinafter referred to as, `the Workman'] in service with continuity and with 60% of the backwages w.e.f 1st January, 1991. The Award has been challenged mainly on the grounds that the respondent workman was working as a daily rated `Tube-well Operator' from 7th January, 1987 to 31st August, 1988 in Bihola village of Sankheda Taluka. The services of respondent workman were terminated w.e.f 1st January, 1989. Again he was appointed in the year 1989 as a Bore Operator at Nagdol and Araniya village and subsequently relieved from service. Thereafter from March, 1990, he was again engaged in Kareli village of Tilakwada Taluka and relieved from services in the month of October, 1991. The said termination order was challenged by the respondent workman before the Labour Court at Vadodara in Reference (LCV) No. 292 of 1992. The statement of claim was filed by the workman and reply thereof was submitted by the petitioner-Corporation. The main contention raised before the Labour Court was to the effect that the respondent was working as a daily rated employee and as and when work was required, he was given the work and at the time when no necessity of work, his services were terminated and he was not working as a permanent employee of the Corporation. Before the Labour Court, the respondent workman was examined vide Exh.8 and vide Exh. 11 one Shri S.H Shah was examined on behalf of the petitioner-Corporation, and thereafter, the matter was heard by the Labour Court. The Labour Court has considered the evidence on record. Witness Shri S.H Shah has deposed that the respondent workman was working as a Tube Well Operator from 7.1.1987 to 31.8.1988 and his services were terminated w.e.f 1.1.1989 and thereafter he was again taken up as a daily rated employee and in October, 1991 his services were terminated. The said witness has also admitted two facts in his cross examination that the workman concerned has worked continuously without any break from 7th January, 1987 till the date of his termination. It is also admitted by the said witness that he was a daily rated employee and the Tube well where the respondent workman was working was at the relevant time continuously functioning and in working condition and on such Tube-well, regular operators of the Corporation are working. Thereafter, the Labour Court has examined the relevant decisions which have been cited by the petitioner-Corporation and considered the evidence led by the respondent workman that to some extent the respondent workman was gainfully employed, and therefore, considering all these aspects, the Labour Court has come to the conclusion that

termination of respondent workman from 1st January, 1991 is illegal and it violates the provisions of Sec. 25-F of the Industrial Disputes Act, 1947 because the respondent workman had completed 240 days continuous service; as admitted by witness Shri S.H Shah vide Exh. 11, and therefore, such a termination is ab inito void. Considering all these aspects of the matter, the Labour Court has been pleased to grant reinstatement with continuity of service with 60% of the backwages from 1st January, 1991 till the date of Award.

Mr. Vaishnav, learned advocate appearing for the petitioner-Corporation has raised a contention that the respondent workman was admittedly working as a daily rated employee and therefore, he is not covered within the definition of Sec. 2 (s) as a `workman', and therefore, he is not entitled to the benefit of Sec. 25-F of the Industrial Disputes Act, 1947 nor the said provision is applicable to the respondent workman. He submitted that the daily wagers are not `workmen' within the meaning of Sec. 2 (s) of the Industrial Disputes Act, 1947. In support of this contention, Mr. Vaishnav has relied upon two authorities in the matters of Premjibhai L. Gamit v. The Executive Engineer, LCB Division, Surendranagar [1998 (3) GLR 2550] and of Apex Court in the matter of Himanshu Kumar Vidyarthi & Ors. v. State of Bihar Ors., [1997 (4) SCC 391]. He submitted that the Apex Court in terms has held that, `..every department of the Government cannot be treated to be industry. When the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded. The petitioners were not appointed to the post in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of retrenchment therefore cannot be stretched to such an extent as to cover these employees. Since the petitioners are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.' Placing reliance upon a decision rendered by learned Single Judge of this Court in the matter of Premji Gamit [Supra], Mr. Vaishnav submitted that in the said decision, this Court has observed that the retrenchment in respect to ad hoc appointments on fixed term basis given by the Government de horse the recruitment rules, and therefore, persons so appointed cannot claim right to a permanent status. In the said decision, the learned Single Judge has considered the verdict of the Supreme Court in the matter of Himanshu

Kumar Vidarthi [Supra].

Heard Mr.Panwani, learned advocate for the respondent-workman. Mr. Panwani has submitted Affidavit-in-reply filed by the respondent workman. The said affidavit-in-reply is taken on record.

I have considered the arguments advanced on behalf of the respective parties. I have also considered the view taken by the Apex Court in the matter of Himanshu Kumar Vidarthi [Supra] and also the view taken by the learned Single Judge in the matter of Premji Gamit [Supra]. In both these cases, the concerned workmen were employed on daily wages or on ad hoc basis as per the requirement of work and their services were terminated after completion of work or after completion of the period specified at the time of appointment. However, in the present case, the respondent workman was not appointed as a daily wage employee for specific work and for specific period. No such appointment order is produced on record in respect to specific work and period. Even it is not the case of the petitioner Corporation that he was appointed for doing some special, specified work which is required to be performed by the daily wager only. Not only that after the termination of the respondent workman, the work which was performed by the respondent workman is continuously performed by a regular Tube Well Operator of the Corporation. However, the contention with respect to the fact that the daily wage employees are not covered under the definition of Sec. 2 (s) and the benefit under Sec. 25-F of the I.D Act is not available has been considered by the Apex Court in its decision in the matter of Ratansinh v. Union of India, reported in 1997 (11) SCC 396 wherein it is held that if any daily rated employee who had continuously served for the requisite statutory period in a year and thereafter his services have been terminated then termination of such daily rated workman without compliance of provisions of Sec. 25-F of the Act is illegal and bad. It is also held by the Apex Court that Sec. 25-F of the Act is applicable even in a case of daily wager and he is entitled to protection of Sec. 25-F of the I.D Act, and therefore also, he is `workman' within the meaning of Sec. 2 (s) of the Act. Similar view is taken by the Apex Court in the case of Samishta Dubey v. City Board of Itawah, reported in 1999 Lab.IC 1125 wherein it is held that in case of retrenchment, rule of last come first go applies even to a daily wager. Similarly, in case of Rajiben Prabhatbhai v. Executive Engineer, Una Irrigation Project Division, reported in 1998 (2) GLH (UJ) 16 and in case of Hareshkumar J.

Pandit of Dy. Executive Engineer, Dhoraji reported in 1990 (2) GLH (UJ) 3 and M.C.D v. Praveen Kumar Jain & Ors., reported in 1998 II LLJ 674, it is held that even daily wager if completed 240 days continuous service within a period of twelve months preceding the date of his termination, he is entitled to the benefit and protection of Sec. 25-F of the I.D Act, 1947.

Recently, the Apex Court in the matter of Management of M.C.D v. Prem Chand Gupta & Anr., reported in AIR (2000) SC 454 has observed that, `earlier appointment of workmen for one year - workmen not confirmed after one year - But, after short break, workmen reappointed against vacant post created by termination of services of another employee - Reappointment was not for fixed period - Workmen continued to work on vacant permanent post for further 18 months - Completed not less than 240 days of continuous service for one calender year immediately preceding impugned termination order - Termination amounts to retrenchment - Non-payment of retrenchment compensation - Termination is null and void. The Apex Court has considered the decisions in the matter of State Bank of India v. N. Sundara Money, AIR (1976) SC 1111 which decision has been approved by the Three-Judge Bench [Constitution Bench] of the Apex Court in the matter of Punjab Land Development & Reclamation Corporation Limited, Chandigarh v. Presiding Office,r Labour Court, Chandigarh, (1990) 3 SCC 682. There is yet another decision of the learned Single Judge-Mr. Justice D.M Dharamadhikari {as he then was} of M.P High Court in the matter of M.P Text-Book Corporation v. Krishnakant Pancholi, 1998 (90) FLR 54 wherein it is held that the provision of Sec. 25-F are applicable to all categories of employees including those employed on daily rated basis or for seasonal work of intervening nature. All categories of employees putting in more than one year continuous service are entitled to payment of retrenchment compensation as a condition precedent for their retrenchment under Sec. 25-F of the I.D Act. Therefore, considering the recent decisions of the Apex Court and also Sec. 2 (s) definition itself, the bare reading cannot exclude the daily wagers. Thus, considering Sec. 2 (oo) of the Act, the word `retrenchment' means termination by the employer of the service of the workman for any reason whatsoever. Therefore, termination of such daily wager is covered to mean `retrenchment' and the daily wager is a `workman' within the meaning of Sec. 2 (s) of the Act, and therefore, the daily wager is entitled to protection and benefit of Sec. 25-F of the Act. Therefore, contention

in that respect raised by the learned advocate Shri Vaishnav cannot be accepted. However, such a contention was not raised by the petitioner before the Labour Court but such a contention is raised in this petition in grounds at para-3 (B), which has been considered by this Court in light of various decisions of the Apex Court and the various High Courts.

Learned Advocate Mr. Vaishnav has not raised other contentions nor made any other submissions except that the respondent workman is not a `workman' within the meaning of Sec. 2 (s) of the I.D Act as he was a daily wager. The award of the Labour Court has been examined in light of the evidence which has been recorded by the Labour Court. The finding of the Labour Court is based upon the admission of the witness Shri S.H Shah vide Exh. 11 wherein he has admitted that the respondent workman was working as a daily wager and he had worked continuously without any break and the work which was performed by the respondent is continuous and the same has been assigned to a regular Operator of the petitioner. Therefore, the period in which the respondent workman was working has been proved and the finding of the Labour Court that he had completed 240 days continuous service within a period of one year preceding 12 months from the date of termination is a finding of fact and the Labour Court has not committed any error in coming to such a conclusion. The said finding of fact is not contrary to the evidence on record and the Labour Court has not committed any error either in law or on facts and there is no jurisdictional error committed by the Labour Court. Further, Mr. Vaishnav is not able to point out any error or infirmity in the award which requires any interference from this Court while exercising the powers under Arts. 226 & 227 of the Constitution of India. Further, this Court cannot exercise powers as an Appellate Authority nor finding of facts can be reappreciated by this Court in light of the various decisions of the Apex Court. Therefore, according to my opinion, there is no substance in the present petition, the same is dismissed accordingly. Notice is discharged. In view of the fact that this petition is dismissed, therefore, the respondent workman who is out of job since 1.1.1991 deserves to be reinstated immediately. Accordingly, I am directing the petitioner to implement the impugned Award within a period of four weeks from the date of receipt of copy of this judgment.

[H.K Rathod, J.]

Prakash*